

16 Am. Jur. 2d Constitutional Law IV A Refs.

American Jurisprudence, Second Edition | February 2021 Update

Constitutional Law

Barbara J. Van Arsdale, J.D.; James Buchwalter, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Lonnie E. Griffith, Jr., J.D.; Janice Holben, J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; Karen L. Schultz, J.D.; Jeffrey J. Shampo, J.D.; and Kimberly C. Simmons, J.D.

IV. Construction of Constitutions

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West's Key Number Digest

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16 Am. Jur. 2d Constitutional Law § 63

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Constitutional Law

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IV. Construction of Constitutions

A. General Rules of Construction

§ 63. Rules of constitutional construction, generally

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  [580](#), [581](#), [589](#), [591](#), [596](#)

When interpreting a constitution, a court's task is to read the laws as they are written and interpret them in accordance with established principles of constitutional construction.¹ The text of a constitutional provision is the primary guide to the provision's purpose.² A written constitution is not to be interpreted according to narrow or super-technical principles but liberally and on broad general lines so that it may accomplish in full measure the objects of its establishment and so carry out the great principles of government.³ Constitutions, meant to endure, must be interpreted with an eye to syntax, history, initial principle, and extension of fundamental purpose, and courts should avoid hypertechnical constructions that frustrate legislative intent.⁴ A constitution must be construed with reference to the fundamental principles which support it, and effect must be given to the intent of its framers and of the people adopting it.⁵ When interpreting a constitutional provision, a court examines its purpose and intent, and by reviewing the history of the constitution and its amendments, the court endeavors to place itself as nearly as possible in the situation of the parties at the time the instrument was made, that it may gather their intention from the language used, viewed in the light of the surrounding circumstances.⁶ It must be presumed that those who drafted a constitution had a clear conception of the principles they intended to express, knew the English language and how to use it, gave careful consideration to the practical application of the constitution, and arranged its provisions in the order that would most accurately express their intention.⁷ Less latitude is permitted when construing constitutional provisions because it is presumed that they have been more carefully and deliberately framed than statutes.⁸

The principles of constitutional interpretation are similar to those governing statutory construction,⁹ except that constitutional provisions are given a broader construction due to their more permanent character.¹⁰

In deciding a question of state constitutional law, the court turns first to the text of the constitution.¹¹ Accordingly, any inquiry into the proper interpretation of a constitutional provision must begin with an examination of that provision's explicit language.¹² In interpreting a constitution, the fundamental rule of construction which guides the courts is that a constitution's language controls and must be interpreted in its popular sense as understood by the people when they voted on its adoption.¹³ The primary objective of constitutional interpretation is to realize the intent of the people by whom and for whom the constitution was ratified.¹⁴ However, it has been said that state constitutional provisions must be interpreted within the context of the times and in accordance with the demands of modern society.¹⁵

When it is necessary to interpret a state constitution, the following tools of analysis should be considered to the extent applicable:

- (1) the wording or text of the constitutional provision;¹⁶
- (2) the case law surrounding it;¹⁷
- (3) the historical circumstances that led to its creation;¹⁸
- (4) the purpose and structure of the constitution;¹⁹
- (5) the situation or evils intended to be remedied, and the good to be accomplished;²⁰
- (6) economic/sociological considerations.²¹

Constitutional language must receive a liberal and practical commonsense construction.²² Courts are obligated to construe a constitution in such a manner as will prevent an evasion of its legitimate operation.²³

Where two provisions of a state constitution relate to the same subject matter, they are to be read in *pari materia*, and the meaning of a particular word cannot be understood outside the context of the section in which it is used.²⁴

Where the text of a clause indicates that it does not have operative effect, such as "whereas" clauses in the Federal Constitution's preamble, a court has no license to make it do what it was not designed to do, and operative provisions should be given effect as operative provisions, and prologues as prologues.²⁵ The requirement that there be a logical connection between a stated purpose in a prefatory clause and a command in an operative clause in a constitutional provision may cause a prefatory clause to resolve an ambiguity in the operative clause but apart from that clarifying function, a prefatory clause does not limit or expand the scope of the operative clause.²⁶

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Footnotes

- 1 [Zook v. Martin](#), 2018 Ark. 293, 557 S.W.3d 880 (2018); [Pritchett v. Spicer](#), 2017 Ark. 82, 513 S.W.3d 252 (2017).
- 2 [Estate of Bell v. Shelby County Health Care Corp.](#), 318 S.W.3d 823 (Tenn. 2010).
- 3 [People v. Giordano](#), 42 Cal. 4th 644, 68 Cal. Rptr. 3d 51, 170 P.3d 623 (2007).
Constitutional rights, like statutory rights, should not be interpreted too rigidly. [Commonwealth v. Riker](#), 573 S.W.3d 622 (Ky. 2018).
Constitutional provisions are not to be treated as outmoded statutes whose provisions are interpreted in a constricted manner so as to give those laws minimal effect. [Brinkman v. Miami Univ.](#), 139 Ohio Misc. 2d

114, 2005-Ohio-7161, 861 N.E.2d 925, 216 Ed. Law Rep. 612 (C.P. 2005), judgment aff'd, 2007-Ohio-4372, 2007 WL 2410390 (Ohio Ct. App. 12th Dist. Butler County 2007).

Saban Rent-a-Car LLC v. Arizona Department of Revenue, 246 Ariz. 89, 434 P.3d 1168 (2019), cert. denied, 140 S. Ct. 195, 205 L. Ed. 2d 132 (2019).

In re Assessments for Year 2005 of Certain Real Property Owned by Askins Properties, L.L.C., 2007 OK 25, 161 P.3d 303 (Okla. 2007).

In re State (State v. Johanson), 156 N.H. 148, 932 A.2d 848 (2007).

Lawnwood Medical Center, Inc. v. Seeger, 990 So. 2d 503 (Fla. 2008).

Lawnwood Medical Center, Inc. v. Seeger, 990 So. 2d 503 (Fla. 2008).

Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority, 44 Cal. 4th 431, 79 Cal. Rptr. 3d 312, 187 P.3d 37 (2008); Ford v. Browning, 992 So. 2d 132 (Fla. 2008); Clark v. Pawlenty, 755 N.W.2d 293 (Minn. 2008); State ex rel. Long v. Justice Court, Lake County, 2007 MT 3, 335 Mont. 219, 156 P.3d 5 (2007); State of N.M. ex rel. Richardson v. 5th Judicial Nominating Commission, 2007-NMSC-023, 141 N.M. 657, 160 P.3d 566 (2007); Committee to Reform Hampshire County Government v. Thompson, 223 W. Va. 346, 674 S.E.2d 207 (2008).

When interpreting a constitutional provision, the Supreme Court will apply general principles of statutory construction. State v. Strom, 2019 ND 9, 921 N.W.2d 660 (N.D. 2019).

Questions of constitutional construction are in the main governed by the same general rules applied in statutory construction. State ex rel. Workman v. Carmichael, 241 W. Va. 105, 819 S.E.2d 251 (2018), cert. denied, 140 S. Ct. 98, 205 L. Ed. 2d 24 (2019) and cert. denied, 140 S. Ct. 106, 205 L. Ed. 2d 24 (2019).

State ex rel. Johnson v. Gale, 273 Neb. 889, 734 N.W.2d 290 (2007).

Kocken v. Wisconsin Council 40, AFSCME, AFL-CIO, 2007 WI 72, 301 Wis. 2d 266, 732 N.W.2d 828 (2007).

In re Request of Governor for Advisory Opinion, 950 A.2d 651 (Del. 2008), as revised, (June 25, 2008); Committee to Reform Hampshire County Government v. Thompson, 223 W. Va. 346, 674 S.E.2d 207 (2008).

Gilman v. Lake Sunapee Properties, LLC, 159 N.H. 26, 977 A.2d 483 (2009).

Constitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures or future judges think that scope too broad. District of Columbia v. Heller, 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008).

Paquin v. City of St. Ignace, 504 Mich. 124, 934 N.W.2d 650 (2019).

Kerrigan v. Commissioner of Public Health, 289 Conn. 135, 957 A.2d 407 (2008).

McCullough v. State, 900 N.E.2d 745 (Ind. 2009); Pendleton School Dist. 16R v. State, 345 Or. 596, 200 P.3d 133, 241 Ed. Law Rep. 423 (2009).

McCullough v. State, 900 N.E.2d 745 (Ind. 2009); Pendleton School Dist. 16R v. State, 345 Or. 596, 200 P.3d 133, 241 Ed. Law Rep. 423 (2009).

Pendleton School Dist. 16R v. State, 345 Or. 596, 200 P.3d 133, 241 Ed. Law Rep. 423 (2009); Harris County Hosp. Dist. v. Tomball Regional Hosp., 283 S.W.3d 838 (Tex. 2009).

As to use of extrinsic factors such as circumstances attending adoption of constitutional provisions, existing conditions, laws, and history in construing a constitution, see §§ 95 to 97.

McCullough v. State, 900 N.E.2d 745 (Ind. 2009).

Harris County Hosp. Dist. v. Tomball Regional Hosp., 283 S.W.3d 838 (Tex. 2009).

State v. Davis, 283 Conn. 280, 929 A.2d 278 (2007).

Myers v. Alaska Psychiatric Institute, 138 P.3d 238 (Alaska 2006); State ex rel. Long v. Justice Court, Lake County, 2007 MT 3, 335 Mont. 219, 156 P.3d 5 (2007).

Grossman v. Dean, 80 P.3d 952 (Colo. App. 2003).

Jubelirer v. Rendell, 598 Pa. 16, 953 A.2d 514 (2008).

District of Columbia v. Heller, 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008).

District of Columbia v. Heller, 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008).

16 Am. Jur. 2d Constitutional Law § 64

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IV. Construction of Constitutions

A. General Rules of Construction

§ 64. Effectuating intent of constitutional provision

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  584

The fundamental rule of constitutional construction is that courts must give effect to the intent of the people in adopting the amendment.¹ In interpreting a constitutional provision, the court's primary purpose is to effectuate the intent of both² those who framed the provision³ and those who adopted or voted for the provision.⁴ For instance, when interpreting a constitutional amendment adopted by citizen's initiative, the supreme court gives effect to the electorate's intent in enacting the amendment by giving words their ordinary and popular meaning,⁵ and looks beyond the amendment's language to ascertain the voters' intent only if the language is susceptible to multiple interpretations.⁶ The polestar of constitutional construction is voter intent, and a court is obligated to give effect to the language of a constitutional amendment according to its meaning and what the people must have understood it to mean when they approved it.⁷ Where a provision in a constitution is ambiguous, a court ordinarily must adopt that interpretation which carries out the intent and objective of the drafters of the provision and the people by whose vote it was enacted.⁸ The court generally discerns the framers' intent from the plain meaning of the language used and may only resort to extrinsic aids if the express language is vague or ambiguous.⁹ The intent of the drafters not expressed in the language of a ballot initiative is not relevant to interpreting a constitutional amendment adopted by initiative.¹⁰

Observation:

In construing a state constitution, citizen-enacted legislation, and legislatively enacted legislation, the object must always be to ascertain the will of the people.¹¹ A constitutional provision must never be construed in such a manner as to make it possible for the will of the people to be frustrated or denied.¹²

The starting point for determining the intent of the framers of a state constitution is the text of the instrument itself.¹³ Intent is to be found in the instrument itself,¹⁴ determined by the language of the provision being examined.¹⁵ The words used in a constitutional provision should be given the construction that effectuates the intent of its framers.¹⁶ The courts cannot ascribe to a constitution a meaning that is contrary to that clearly intended by the drafters, and they must undertake to ascribe to the words of a constitutional provision the meaning that the people understood them to have when the provision was adopted.¹⁷

When seeking the intent of the drafters in interpreting a constitution, a court keeps in mind the object desired to be accomplished and the evils sought to be prevented or remedied,¹⁸ as well as the purpose of the provision and the historical context in which it was written.¹⁹

When courts interpret an undefined constitutional term, courts examine the common law as it existed at the time the constitutional provision was enacted, the constitutional debates that bore on the undefined term, the plain meaning of the term at the time the constitutional provision was adopted, and the earliest interpretation in laws passed shortly after the adoption of the constitutional provision or court opinions that interpreted the provision.²⁰ Thus, where definitions for terms are not given in a state constitution, a court's primary task in construing the terms in a constitutional amendment is to ascertain and give effect to the intent of those who adopted the amendment.²¹

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Footnotes

- 1 [Pestka v. State](#), 493 S.W.3d 405 (Mo. 2016).
- 2 [Sierra Club v. Department of Transportation of State of Hawai'i](#), 120 Haw. 181, 202 P.3d 1226 (2009), as amended, (May 13, 2009); [Bonner ex rel. Bonner v. Daniels](#), 907 N.E.2d 516, 245 Ed. Law Rep. 412 (Ind. 2009).
- 3 [Cain v. Horne](#), 220 Ariz. 77, 202 P.3d 1178, 242 Ed. Law Rep. 435 (2009); [Riley v. Rhode Island Dept. of Environmental Management](#), 941 A.2d 198 (R.I. 2008).
- 4 [Heath v. Kiger](#), 217 Ariz. 492, 176 P.3d 690 (2008); [Barrett v. Tennessee Occupational Safety and Health Review Com'n](#), 284 S.W.3d 784 (Tenn. 2009).
Courts may not properly interpret a constitutional amendment adopted by voter initiative in a way that the electorate did not contemplate as the voters should get what they enacted, not more and not less. [American Civil Rights Foundation v. Berkeley Unified School Dist.](#), 172 Cal. App. 4th 207, 90 Cal. Rptr. 3d 789, 242 Ed. Law Rep. 285 (1st Dist. 2009).
- 5 [Dwyer v. State](#), 2015 CO 58, 357 P.3d 185, 322 Ed. Law Rep. 1111 (Colo. 2015).
- 6 [Dwyer v. State](#), 2015 CO 58, 357 P.3d 185, 322 Ed. Law Rep. 1111 (Colo. 2015).
- 7 [Benjamin v. Tandem Healthcare, Inc.](#), 998 So. 2d 566 (Fla. 2008).
- 8 [Ford v. Browning](#), 992 So. 2d 132 (Fla. 2008).
- 9 [Crites v. Lewis and Clark County by and through County Attorney](#), 2019 MT 161, 396 Mont. 336, 444 P.3d 1025 (2019).

10 Mesa County Bd. of County Com'rs v. State, 203 P.3d 519, 242 Ed. Law Rep. 448 (Colo. 2009).
11 Opinion of the Justices, 2017 ME 100, 162 A.3d 188 (Me. 2017), as revised, (Sept. 19, 2017).
12 Ford v. Browning, 992 So. 2d 132 (Fla. 2008).
13 Clarabal v. Department of Education, 145 Haw. 69, 446 P.3d 986, 369 Ed. Law Rep. 398 (2019).
14 Sierra Club v. Department of Transportation of State of Hawai'i, 120 Haw. 181, 202 P.3d 1226 (2009), as
amended, (May 13, 2009).
15 Matthews v. Funck, 2007 OK CIV APP 15, 155 P.3d 852 (Div. 2 2007).
16 Abrams v. Lamone, 398 Md. 146, 919 A.2d 1223 (2007).
17 Jefferson County Fire Protection Districts Ass'n v. Blunt, 205 S.W.3d 866 (Mo. 2006) (holding modified on
other grounds by, City of Normandy v. Greitens, 518 S.W.3d 183 (Mo. 2017)).
18 Myers v. City of McComb, 943 So. 2d 1 (Miss. 2006).
19 Meador v. EMC Mortg. Corp., 236 S.W.3d 451 (Tex. App. Amarillo 2007).
20 Koschkee v. Taylor, 2019 WI 76, 387 Wis. 2d 552, 929 N.W.2d 600, 367 Ed. Law Rep. 1091 (2019).
21 Arthur v. City and County of Denver, 198 P.3d 1285 (Colo. App. 2008).

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IV. Construction of Constitutions

A. General Rules of Construction

§ 65. Necessity of construction of constitutional provisions; ambiguity

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  [580](#), [581](#), [591](#), [592](#), [596](#)

Constitutional provisions are not open to construction as a matter of course.¹ Construction is appropriate only when it has been demonstrated that the meaning of the provision is not clear, and therefore, construction is necessary.² Where the meaning of a constitutional provision is clear on its face, a court will not go beyond that language in determining the voters' intent or to create an ambiguity when none exists.³ Thus, if the language of a constitutional provision is clear, there is no need for construction.⁴ Where constitutional language is unambiguous and speaks for itself, a court's obligation is to interpret the language from the provision alone without resorting to extrinsic methods of interpretation.⁵ Further, neither rules of construction nor rules of interpretation may be used to defeat the clear and certain meaning of a constitutional provision.⁶ In interpreting a constitutional provision, a court's analysis is straightforward: if the language in the provision is clear, unambiguous, and addresses the matter in issue, then it must be enforced as written.⁷ On the other hand, an ambiguous provision in a constitution requires interpretation consistent with the intent of both the drafters and the electorate.⁸

Observation:

Where a court of last resort has construed a constitutional provision, such construction is binding on all departments of government, including the legislature.⁹

A constitutional provision which is positive and free from all ambiguity must be accepted by the courts as it reads¹⁰ and should be applied rather than construed.¹¹ When the language of a constitutional provision adopted through the initiative process is clear on its face, a court will not go beyond that language in determining the voters' intent or to create an ambiguity when none exists.¹² The aim of judicial construction, and also its limitation, is to determine the meaning of what has been written—not to delete sections from the constitution on the theory that if conditions had been different, they would not have been written.¹³ In other words, in construing a constitutional provision, the supreme court is not at liberty to add words that were not placed there originally or to ignore words that were expressly placed there at the time of adoption of the provision.¹⁴

Observation:

In examining the language of a constitution, the courts are not concerned with the wisdom or expediencies of constitutional provisions, and the duty of the judiciary is merely to carry out the provisions of the plain language stated in the constitution.¹⁵

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Footnotes

- 1 City of Elkhorn v. City of Omaha, 272 Neb. 867, 725 N.W.2d 792 (2007).
- 2 City of Elkhorn v. City of Omaha, 272 Neb. 867, 725 N.W.2d 792 (2007).
- 3 MDC Restaurants, LLC v. The Eighth Judicial District Court of the State of Nevada in and for County of Clark, 134 Nev. 315, 419 P.3d 148, 134 Nev. Adv. Op. No. 41 (2018).
If the language of a constitutional provision is clear and unambiguous, the plain meaning governs. *Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority*, 44 Cal. 4th 431, 79 Cal. Rptr. 3d 312, 187 P.3d 37 (2008).
- 4 *Maddux v. Blagojevich*, 233 Ill. 2d 508, 331 Ill. Dec. 749, 911 N.E.2d 979 (2009); *Fletcher v. Com.*, 163 S.W.3d 852 (Ky. 2005).
- 5 *Montanans for Equal Application of Initiative Laws v. State ex rel. Johnson*, 2007 MT 75, 336 Mont. 450, 154 P.3d 1202 (2007).
When the text of a constitutional provision is not ambiguous, the courts, in giving construction thereto, are not at liberty to search for its meaning beyond the instrument. *In re Assessments for Year 2005 of Certain Real Property Owned by Askins Properties, L.L.C.*, 2007 OK 25, 161 P.3d 303 (Okla. 2007).
- 6 *Gray v. Mitchell*, 373 Ark. 560, 285 S.W.3d 222, 246 Ed. Law Rep. 457 (2008).
- 7 *Pleus v. Crist*, 14 So. 3d 941 (Fla. 2009).
- 8 *State ex rel. Workman v. Carmichael*, 241 W. Va. 105, 819 S.E.2d 251 (2018), cert. denied, 140 S. Ct. 98, 205 L. Ed. 2d 24 (2019) and cert. denied, 140 S. Ct. 106, 205 L. Ed. 2d 24 (2019).
As to effectuating intent of constitutional provisions, see § 64.

- 9 State ex rel. Stephan v. Finney, 254 Kan. 632, 867 P.2d 1034 (1994); Richardson v. Hare, 381 Mich. 304, 160 N.W.2d 883 (1968); State ex rel. Tharel v. Board of Com'rs of Creek County, 1940 OK 468, 188 Okla. 184, 107 P.2d 542 (1940).
- In the performance of assigned constitutional duties, each branch of the government must initially interpret the Constitution, and the interpretation of its powers by any branch is due great respect from the others; however, it is emphatically the province and duty of the judicial department to say what the law is. *U.S. v. Nixon*, 418 U.S. 683, 94 S. Ct. 3090, 41 L. Ed. 2d 1039 (1974).
- 10 Stapleford v. Houghton, 185 Ariz. 560, 917 P.2d 703 (1996); In re Great Outdoors Colorado Trust Fund, 913 P.2d 533 (Colo. 1996); Louisiana Associated General Contractors, Inc. v. State Through Div. of Admin., Office of State Purchasing, 669 So. 2d 1185 (La. 1996).
- The language of a constitutional provision is ambiguous if it is susceptible to two or more reasonable but inconsistent interpretations. *Miller v. Burk*, 124 Nev. 579, 188 P.3d 1112 (2008).
- 11 Randolph County Bd. of Educ. v. Adams, 196 W. Va. 9, 467 S.E.2d 150, 107 Ed. Law Rep. 324 (1995).
- 12 Miller v. Burk, 124 Nev. 579, 188 P.3d 1112 (2008).
- 13 Harrison v. Day, 200 Va. 439, 106 S.E.2d 636 (1959).
- 14 Israel v. Desantis, 269 So. 3d 491 (Fla. 2019).
- 15 Committee to Reform Hampshire County Government v. Thompson, 223 W. Va. 346, 674 S.E.2d 207 (2008).

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IV. Construction of Constitutions

A. General Rules of Construction

§ 66. Reading constitution as a whole; giving effect to every word and part

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West's Key Number Digest

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A constitution must be read and considered as a whole,¹ and every provision must be read in light of other provisions relating to the same subject matter.² In construing individual sections, the constitution must be read as a whole, considering other sections that may shed light on the provision in question.³ A constitutional provision should be construed as a whole in order to ascertain the general purpose and meaning of each part.⁴ A constitutional provision should not be construed in isolation but as it relates to and interacts with other constitutional provisions.⁵

Courts strive to give effect to every word of a constitutional provision.⁶ Each word of a constitutional phrase informs a proper understanding of the whole.⁷ Courts must assume that every word contained in a constitutional provision has effect, meaning, and is not mere surplusage.⁸

An elementary rule of construction is that, if possible, effect should be given to every part and every word of a constitution⁹ unless there is some clear reason for doing so.¹⁰ In construing constitutional provisions, the supreme court will attempt to give meaning to every word, phrase, and sentence, and, if necessary, it will attempt to reconcile and harmonize potentially conflicting provisions.¹¹ In interpreting a constitutional provision, each word, phrase, clause, and sentence must be given meaning so that no part will be void, inert, redundant, or trivial.¹² Unless there is some clear reason to the contrary, no portion of the fundamental law should be treated as superfluous, meaningless, or inoperative.¹³ It is a basic rule of construction that a constitutional provision should be construed to make all its parts harmonize and to give a sensible and intelligent effect to each part as it is not presumed that the legislature intended that any part would be without meaning.¹⁴ Courts must favor a construction of a constitution that

will render every word operative rather than one that may make some words meaningless or nugatory.¹⁵ Every clause in a state constitution must be given its due force, meaning, and effect with no word or section assumed to have been unnecessarily used or needlessly added, and a court must presume the language was carefully weighed, and its terms imply a definite meaning.¹⁶

The legal intendment is that every word¹⁷ and every clause has been inserted for some useful purpose¹⁸ and, when rightfully understood, has some practical operation.¹⁹

When possible, the interpretation of a constitutional provision will be harmonized with other provisions to avoid unreasonable or absurd results.²⁰ Every effort should be made to construe constitutional provisions harmoniously, and no provision should be construed to nullify or impair another.²¹ Apparently conflicting provisions of a constitution²² or ambiguous provisions should, if possible, be construed harmoniously.²³

Observation:

The rule favoring the harmonization of different constitutional provisions has been applied not only to provisions of the same constitution but also to provisions of a state constitution and the United States Constitution; in this context, it has been held that where a provision of a state constitution is capable of two constructions, one of which would be in conflict with the United States Constitution, the other must be adopted.²⁴

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Footnotes

- 1 [Pritchett v. Spicer](#), 2017 Ark. 82, 513 S.W.3d 252 (2017); [Gatzke v. Weiss](#), 375 Ark. 207, 289 S.W.3d 455 (2008); [Halverson v. Secretary of State](#), 124 Nev. 484, 186 P.3d 893 (2008); [In re Request for Advisory Opinion from House of Representatives \(Coastal Resources Management Council\)](#), 961 A.2d 930 (R.I. 2008).
Because constitutions are adopted as a whole, the whole instrument is to be examined with a view to arriving at the true intent of each part. [Barrett v. Tennessee Occupational Safety and Health Review Com'n](#), 284 S.W.3d 784 (Tenn. 2009).
Constitutions are not to be interpreted according to the words used in particular clauses, as the whole must be considered, with a view to ascertain the sense in which the words were employed, and its words must be taken in their ordinary and common acceptance because they are presumed to have been so understood by the framers and by the people who adopted it. [Roskelly v. Lamone](#), 396 Md. 27, 912 A.2d 658 (2006).
- 2 [Pritchett v. Spicer](#), 2017 Ark. 82, 513 S.W.3d 252 (2017).
Effective constitutional interpretation requires that the court view the constitution as a whole, construing provisions in context with other relevant provisions. [Gregg v. Rauner](#), 2018 IL 122802, 429 Ill. Dec. 437, 124 N.E.3d 947 (Ill. 2018).
- 3 [Pestka v. State](#), 493 S.W.3d 405 (Mo. 2016).
- 4 [Ford v. Browning](#), 992 So. 2d 132 (Fla. 2008).
- 5 [Johnson v. Tenth Judicial Dist. Court of Appeals at Waco](#), 280 S.W.3d 866 (Tex. Crim. App. 2008).
- 6 [TABOR Foundation v. Regional Transportation District](#), 2018 CO 29, 416 P.3d 101 (Colo. 2018).

- 7 Town of Boone v. State, 369 N.C. 126, 794 S.E.2d 710 (2016).
- 8 Pestka v. State, 493 S.W.3d 405 (Mo. 2016).
- 9 Pendleton School Dist. 16R v. State, 345 Or. 596, 200 P.3d 133, 241 Ed. Law Rep. 423 (2009); Jubelirer v. Rendell, 598 Pa. 16, 953 A.2d 514 (2008).

All constitutional provisions enjoy equal dignity, and a fundamental rule of construction requires construction of every clause or section of a constitution consistently with its words to protect and guard its purposes. National Pride At Work, Inc. v. Governor of Michigan, 274 Mich. App. 147, 732 N.W.2d 139, 220 Ed. Law Rep. 832 (2007), judgment aff'd, 481 Mich. 56, 748 N.W.2d 524 (2008).
- 10 Voters for Responsible Retirement v. Board of Supervisors, 8 Cal. 4th 765, 35 Cal. Rptr. 2d 814, 884 P.2d 645 (1994).
- 11 State v. Strom, 2019 ND 9, 921 N.W.2d 660 (N.D. 2019).
- 12 Cain v. Horne, 220 Ariz. 77, 202 P.3d 1178, 242 Ed. Law Rep. 435 (2009).
- 13 Martin v. Humphrey, 2018 Ark. 295, 558 S.W.3d 370 (2018).
- 14 Goldberg v. State, 282 Ga. 542, 651 S.E.2d 667 (2007).
- 15 Patterson Recall Committee, Inc. v. Patterson, 209 P.3d 1210 (Colo. App. 2009).
- 16 Riley v. Rhode Island Dept. of Environmental Management, 941 A.2d 198 (R.I. 2008).
- 17 Havens v. Board of County Com'rs of County of Archuleta, 924 P.2d 517 (Colo. 1996).
- 18 Succession of Lauga, 624 So. 2d 1156 (La. 1993); City of Pawtucket v. Sundlun, 662 A.2d 40, 102 Ed. Law Rep. 235 (R.I. 1995).
- 19 In re Great Outdoors Colorado Trust Fund, 913 P.2d 533 (Colo. 1996).
- 20 We People Nevada ex rel. Angle v. Miller, 124 Nev. 874, 192 P.3d 1166 (2008).
- 21 In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71, 479 Mich. 1, 740 N.W.2d 444 (2007).

Whenever possible, constitutional provisions should be read to coexist so that both may stand and be operative. In re Request for Advisory Opinion from House of Representatives (Coastal Resources Management Council), 961 A.2d 930 (R.I. 2008).
- 22 Serrano v. Priest, 5 Cal. 3d 584, 96 Cal. Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187 (1971); State v. Muhammad, 145 N.J. 23, 678 A.2d 164 (1996).
- 23 State v. Pavao, 81 Haw. 142, 913 P.2d 553 (Ct. App. 1996).
- 24 Kruidenier v. McCulloch, 258 Iowa 1121, 142 N.W.2d 355 (1966), opinion supplemented, 261 Iowa 1309, 158 N.W.2d 170 (1968).

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IV. Construction of Constitutions

A. General Rules of Construction

§ 67. Harmonizing constitutional amendments with antecedent constitutional provisions

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  600

In accordance with the general rule that harmony in constitutional construction should prevail whenever possible,¹ an amended constitution must be read as a whole as if every part of it had been adopted at the same time and as one law.² Effect should be given to every part of the constitution, as amended,³ and amendments should be construed so as to harmonize with other constitutional provisions⁴ rather than one that would create a conflict between them.⁵ In other words, the supreme court will consider a constitutional amendment as a whole and, when possible, adopt an interpretation of the language which harmonizes different constitutional provisions rather than an interpretation which would create a conflict between such provisions.⁶

A constitutional amendment is not to be considered as an isolated bit of design and color but must be seen as an integral part of the entire harmonious picture of the constitution.⁷ A new constitutional provision adopted by a people already having well-defined institutions and systems of law should not be construed as intended to abolish the former system, except insofar as the old order is in manifest repugnance to the new constitution, but such a provision should be read in the light of the former law and existing system.⁸

Repeal of a constitutional provision by implication is accomplished when a constitutional amendment takes up a whole subject anew and covers the entire subject matter of the original constitutional provision.⁹ In construing a constitutional provision, however, implied repeals are disfavored.¹⁰ Thus, if a constitutional amendment contains no express repeal or modification provisions, the old and the new provisions should stand and operate together if by so doing the intent of the lawmaking power as duly expressed in the later provision is not contravened.¹¹ Nonetheless, under some state constitutions, the intention of the

framers and the electorate to retain a prior constitutional provision must be explicit or clearly and unambiguously implicit in the current constitution in order to save the prior provision from repeal; a merely ambiguous suggestion of retention does not, as a general rule, justify further interpretation by a court in search of such intention.¹² Similarly, a constitutional amendment which takes the form of a repeal will not ordinarily be held to affect constitutional provisions to which the repealed provision was related.¹³

A court must seek to construe constitutional provisions in harmony, but when provisions cannot be harmonized, a specific section governs over a general section regardless of priority of enactment.¹⁴ Additionally, where a specific constitutional amendment provides an explicit textual source of constitutional protection against a particular sort of government behavior, the express provision, not the more generalized notion of substantive due process, controls the analysis.¹⁵

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Footnotes

- 1 § 66.
- 2 *Shamburger v. Duncan*, 253 S.W.2d 388 (Ky. 1952).
- 3 *State v. Gentry*, 125 Wash. 2d 570, 888 P.2d 1105 (1995).
- 4 *State ex rel. Johnson v. Gale*, 273 Neb. 889, 734 N.W.2d 290 (2007); *State v. Muhammad*, 145 N.J. 23, 678 A.2d 164 (1996).
- 5 Different sections of a constitution are to be construed as a whole in an effort to harmonize the various provisions. *Maupin v. Commonwealth*, 542 S.W.3d 926 (Ky. 2018).
- 6 *Patterson Recall Committee, Inc. v. Patterson*, 209 P.3d 1210 (Colo. App. 2009).
- 7 *Gessler v. Smith*, 2018 CO 48, 419 P.3d 964 (Colo. 2018), cert. denied, 139 S. Ct. 430, 202 L. Ed. 2d 318 (2018).
- 8 *Kirkpatrick v. King*, 228 Ind. 236, 91 N.E.2d 785 (1950).
- 9 *Sylvester v. Tindall*, 154 Fla. 663, 18 So. 2d 892 (1944).
- 10 *Bryant v. English*, 311 Ark. 187, 843 S.W.2d 308 (1992).
- 11 *State v. Gentry*, 125 Wash. 2d 570, 888 P.2d 1105 (1995).
- 12 *Wilson v. Crews*, 160 Fla. 169, 34 So. 2d 114 (1948).
- 13 *City of New Orleans v. Board of Com'rs of Orleans Levee Dist.*, 640 So. 2d 237 (La. 1994).
- 14 *Egbert v. City of Dunseith*, 74 N.D. 1, 24 N.W.2d 907, 168 A.L.R. 621 (1946).
- 15 *State ex rel. League of Women Voters of New Mexico v. Advisory Committee to the New Mexico Compilation Commission*, 2017-NMSC-025, 401 P.3d 734 (N.M. 2017).
- 16 *Elliott v. State*, 305 Ga. 179, 824 S.E.2d 265 (2019).

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16 Am. Jur. 2d Constitutional Law § 68

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IV. Construction of Constitutions

A. General Rules of Construction

§ 68. Irreconcilable conflict between separate provisions of constitution

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  596

A conflict between constitutional amendments exists if one provision authorizes what the other forbids or forbids what the other authorizes.¹ Only where an irreconcilable conflict exists between different provisions of the constitution, the office of judicial construction is to determine which will prevail.² Distinct provisions of the constitution are repugnant to each other in such a way as to be irreconcilable only when they are related to the same subject, are adopted for the same purposes, and cannot be enforced without material and substantial conflict.³ However, where two constitutional amendments are not irreconcilably inconsistent, both must stand, even if there is some tension between them.⁴

Observation:

The test for determining whether a conflict between constitutional amendments exists is whether one amendment prohibits what the other permits or vice versa.⁵

A constitutional provision does not necessarily trigger heightened scrutiny merely because its language is detailed or otherwise specific.⁶ If there is a conflict between a general and a special or specific provision in a constitution, the special or specific provision must prevail in respect of its subject matter,⁷ but the general provision will be left to control in cases where the special or specific provision does not apply.⁸ Although the terms of an organic provision will not be strained to imply limitation upon the lawmaking power of the legislature where express and definite limitations are imposed by one section of organic law, amendments of other sections of the constitution will not be construed to remove such fixed limitations further than the terms of the amendment fairly require.⁹

If there is a real inconsistency between a constitutional amendment and an antecedent provision, the amendment must prevail because it is the latest expression of the will of the people.¹⁰ In such a case, there is no room for the application of the rule as to harmonizing inconsistent provisions.¹¹ If it covers the same subject as was covered by a previously existing constitutional provision, thereby indicating an intent to substitute it in lieu of the original, the doctrine of implied repeal, though not favored,¹² will be applied and the original provision deemed superseded.¹³

When two amendments are adopted on the same day, they should, if possible, be so construed that effect may be given to both, but where a section of the constitution is amended at the same time by two different amendments, and the amendments adopted are directly in conflict, and it is impossible to determine which should stand as a part of the constitution or to reconcile the same, then they must both fail.¹⁴

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Footnotes

- 1 Bolt v. Arapahoe County School Dist. No. Six, 898 P.2d 525, 101 Ed. Law Rep. 1185 (Colo. 1995).
- 2 City and County of San Francisco v. County of San Mateo, 10 Cal. 4th 554, 41 Cal. Rptr. 2d 888, 896 P.2d 181 (1995).
- 3 Meyers v. Flournoy, 209 La. 812, 25 So. 2d 601 (1946).
- 4 StopAquila.org v. City of Peculiar, 208 S.W.3d 895 (Mo. 2006).
- 5 StopAquila.org v. City of Peculiar, 208 S.W.3d 895 (Mo. 2006).
- 6 Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994), as modified on denial of reh'g, (Oct. 11, 1994).
- 7 Fruge v. Board of Trustees of Louisiana State Employees' Retirement System, 6 So. 3d 124 (La. 2008); Jubelirer v. Rendell, 598 Pa. 16, 953 A.2d 514 (2008).
- 8 McDonald v. Schnipke, 380 Mich. 14, 155 N.W.2d 169 (1968).
- 9 Gray v. Golden, 89 So. 2d 785 (Fla. 1956).
- 10 Spradlin v. City of Fulton, 924 S.W.2d 259 (Mo. 1996); Denish v. Johnson, 1996-NMSC-005, 121 N.M. 280, 910 P.2d 914, 106 Ed. Law Rep. 1349 (1996).
- 11 State ex rel. Lein v. Sathre, 113 N.W.2d 679 (N.D. 1962).
- 12 Parrott & Co. v. City and County of San Francisco, 131 Cal. App. 2d 332, 280 P.2d 881 (1st Dist. 1955).
- 13 Johnston v. Hicks, 225 Ga. 576, 170 S.E.2d 410 (1969).
- 14 Opinion to the Governor, 78 R.I. 144, 80 A.2d 165 (1951).

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IV. Construction of Constitutions

A. General Rules of Construction

§ 69. Rules of grammar, composition, and punctuation applied to construction of constitutional provisions

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Although in construing constitutional provisions the courts must read words and phrases in context according to the rules of grammar and common usage,¹ constitutions should be construed liberally and should not be limited by technical rules of grammar.² Similarly, the elegance of composition may be sacrificed, and verbal discrepancies may be disregarded, to arrive at the proper construction of a provision.³ However, a court must always be reluctant to stretch the meanings of words and should be particularly careful not to give them a flavor or a limit they were not intended to have, and a court should be doubly hesitant when the words define constitutional rights.⁴

It is a well-settled rule of construction that where no contrary intention appears, relative and qualifying words and phrases refer, both grammatically and legally, to the last or nearest antecedent noun.⁵

Punctuation is not considered part of an enactment, and it is not a controlling factor in the construction of constitutional provisions to any greater extent than it is in the construction of statutes.⁶ Punctuation may be ignored when it becomes necessary to ascertain the true meaning of the language of a provision.⁷

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Footnotes

¹ [State ex rel. Colvin v. Brunner, 120 Ohio St. 3d 110, 2008-Ohio-5041, 896 N.E.2d 979 \(2008\).](#)

- 2 [State ex rel. La Prade v. Cox](#), 43 Ariz. 174, 30 P.2d 825 (1934).
Courts are reluctant to construe constitutional provisions solely upon consideration of punctuation and grammar if the purpose of a provision may be otherwise determined. [Missourians to Protect the Initiative Process v. Blunt](#), 799 S.W.2d 824 (Mo. 1990).
- 3 [People v. Zolotoff](#), 48 Cal. App. 2d 360, 119 P.2d 745 (1st Dist. 1941).
- 4 [Peterson v. Williams](#), 85 F.3d 39 (2d Cir. 1996).
- 5 [State v. Haye](#), 72 Wash. 2d 461, 433 P.2d 884 (1967).
- 6 [Missourians to Protect the Initiative Process v. Blunt](#), 799 S.W.2d 824 (Mo. 1990).
As to the effect of punctuation in the construction of statutes, generally, see [Am. Jur. 2d, Statutes §§ 130, 132](#).
- 7 [Roth Drugs v. Johnson](#), 13 Cal. App. 2d 720, 57 P.2d 1022 (3d Dist. 1936).

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IV. Construction of Constitutions

A. General Rules of Construction

§ 70. Effect of federal court decisions construing state constitutions

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West's Key Number Digest

West's Key Number Digest, [Courts](#) 97(1) to 97(6)

State courts are not bound to follow a decision of a federal court, even the United States Supreme Court, dealing with state law.¹ Thus, a state court is not bound to follow a decision of a federal court construing the constitution of that state² although a federal court's construction of a state constitution may have persuasive effect on the courts of that state.³

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Footnotes

- ¹ [Am. Jur. 2d, Courts § 142.](#)
When interpreting the North Carolina Constitution, the North Carolina Supreme Court is not bound by opinions of the Supreme Court of the United States construing even identical provisions in the Constitution of the United States. [State v. McClendon](#), 350 N.C. 630, 517 S.E.2d 128 (1999).
As to consideration of various constructions placed on the Federal Constitution when construing similar provisions of state constitutions, see §§ [86](#) to [89](#).
- ² [People v. Class](#), 67 N.Y.2d 431, 503 N.Y.S.2d 313, 494 N.E.2d 444 (1986).
- ³ [Am. Jur. 2d, Courts § 142.](#)

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